

IN THE MATTER OF

BEFORE THE

MILLER BROTHERS PROPERTIES

HOWARD COUNTY

Petitioner

BOARD OF APPEALS

HEARING EXAMINER

BA Case No. 07-006S

DECISION AND ORDER

On December 20, 2007, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Miller Brothers Properties for a variance to erect a 23.6-foot high by 8.54-foot wide, 145.44 square-foot, freestanding pole identification sign with a 5.5-foot right-of-way setback rather than the 145.44-square foot setback required in relation to the total sign area and the 27-foot setback required in relation to the sign height., for a commercial use in a B-2 (Business: General) Zoning District, filed pursuant to Section 3.501.C of Subtitle 5 of Title 3 of the Howard County Code (the "Sign Code").

The Petitioners certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Marvin Singer represented the Petitioner. Robert Miller testified in support of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The Petitioner is a member of Miller Brothers Properties, LLC. The subject property has an address of 8528 Baltimore National Pike (US 40) and is located in the 2nd Election District in Ellicott City (the "Property"). The Property is referenced on Tax Map 18 as Parcel 158, Lot 276.
2. The 4.14-acre Property is located at the intersection of westbound US 40 and Normandy Center Drive. It is generally rectangular, except along the southwest lot line. The Property is about 313 feet wide along US 40 and 240 feet deep along Normandy Center Drive.
3. 40,000 vehicles tough intersection
4. The Property is currently used, in main part, for storing vehicles for an automotive dealership, the primary structures of which are apparently located on an adjoining parcel to the north.
5. To the dealership's north is a B-2 zoned gasoline service station and a small strip mall. To the west, across a heavily wooded lot, the B-2 zoned property improved by a one-story structure currently used as a gym. To the east is the Normandy Shopping Center.
6. The Petitioner is requesting a variance under Section 3.501.C of the Sign Code to erect a 23.6-foot high by 8.54-foot wide, 145.44 square-foot, freestanding pole identification sign with a 5.5-foot right-of-way setback rather than the 145.44-square foot setback required in relation to the total sign area and the 27-foot setback required in relation to the sign height.
7. The proposed sign, Applicant's Exhibit 6, will be internally illuminated. The double-upper-most faced 10.6-foot high by 8.6-foot side sign will contain the words "Lincoln Mercury,"

above which is the brand logo. The proposed total height is 23 feet, 6 inches. The sign would be located in the southeast corner of the Property.

8. This proposed sign would replace the current sign. The petition states the proposed sign is needed because State law requires automotive dealerships to display identification signs for the makes of cars sold.

9. This section of US 40 has a steep grade, which obstructs motorists' view of the existing sign from both the east and westbound travel lanes of US 40.

10. Applicant's Exhibits 1-5 are photographs of the approach to the dealership from east and westbound US 40. These photographs indicated that the large Normandy Shopping Center sign on the other side of Normandy Center Drive obstruct westbound motorists' view of the existing sign until about 150 feet from the drive. They also indicate that the eastbound view of the existing sign is blocked by a line of utility poles, existing signage, and structures on adjacent properties until motorists are about 200 feet from Normandy Center Drive.

11. Mr. Miller testified that a sign consultant determined the proposed sign and location is the minimum necessary to identify the brand.

CONCLUSIONS OF LAW

Section 3.513(b) of the Sign Code permits the Board of Appeals to grant variances from the provisions of the Sign Code where certain determinations are made. Based upon the foregoing Findings of Facts, I conclude as follows:

1. That there are unique physical conditions or exceptional topographical conditions peculiar to the property on which the proposed sign is to be located, including the location of existing buildings and other structures, irregularity, narrowness or shallowness of the

lot, irregularity of the road right-of-way, location on a highway that has a dependency on nonlocal use, which conditions lead to practical difficulty and unnecessary hardship in complying strictly with the provisions of this subtitle.

The Property is located along a highway with a dependency on nonlocal use. I therefore conclude these conditions lead to practical difficulty and unnecessary hardship in complying strictly with the setback requirements of the Sign Code, in accordance with Section 3.513(b)(1).

2. Or, that there are obstructions, such as excessive grade, building interference, structures or landscaping on abutting property or properties which seriously interfere with the visibility of a proposed sign, resulting in practical difficulties and unnecessary hardship in complying strictly with the provisions of this subtitle.

Exiting buildings, signs, several wooded areas, and the steep grade of US 40 impede motorists' view of a complying sign, causing practical difficulties and unnecessary hardship in complying with this subtitle. The Petitioner did not create these conditions, in accordance with Section 3.513(b)(2).

3. Or, that there are historical, architectural, or aesthetic characteristics which shall be considered.

There are no historical, architectural, or aesthetic characteristics of the Property to be considered under section 3.513(b)(3).

4. That the variance, if granted, will not adversely affect the appropriate use or development of adjacent properties, nor result in a dangerous traffic condition.

The proposed sign will be generally separated from vicinal commercial and residential properties and will not result in a dangerous traffic condition.

5. That the requested variance is the minimum necessary to afford relief, and can be granted without substantial impairment of the intent, purpose and integrity of this subtitle.

The proposed sign is the minimum necessary to afford relief and can be granted with substantial impairment of the intent, purpose and integrity of the Sign Code, in accordance with Section 3.513(b)(5).

6. That such practical difficulties or hardships have not been created by the applicant; provided, however, that where required findings pursuant to section 3.513 are made, the purchase or lease of the property on which a proposed sign is to be located subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

The practical difficulties are a result of unique Property conditions, vicinal obstructions, and highway conditions. The Petitioner did not create these conditions, in accordance with Section 3.513(b)(6).

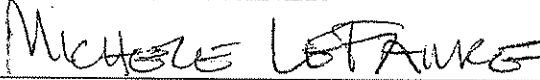
ORDER

Based upon the foregoing, it is this 18th day of January 2008, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Miller Brothers Properties for a variance to erect a 23.6-foot high by 8.54-foot wide, 145.44 square-foot, freestanding, internally illuminated, pole identification sign with a 5.5-foot right-of-way setback rather than the 145.44-square foot setback required in relation to the total sign area and the 27-foot setback required in relation to the sign height, in a B-2 (Business: General) zoning district is hereby **GRANTED;**

Provided, however, that the variance shall apply only to the uses and structures as described in the petition and plan submitted, and not to any other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFaivre

Date Mailed: 1/23/08

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.